

DEPARTMENT OF STATE REVENUE

04-20140303.LOF

Letter of Findings Number: 04-20140303
Use Tax
For Tax Year 2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The transfer of a vehicle from settlors/trustees of a trust to the trust did not constitute a transaction subject to use tax. The transfer was not for consideration.

ISSUE**I. Use Tax—Vehicle Transfer.**

Authority: Maurer v. Ind. Dep't of State Revenue, 607 N.E.2d 985 (Ind. Tax 1993); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; IC § 6-2.5-3-6; IC § 6-2.5-4-1; IC § 6-2.5-5-15.5; [45 IAC 2.2-3-4](#); Black's Law Dictionary 1654 (9th ed. 2009).

Taxpayer protests the imposition of use tax on the transfer of a vehicle.

II. Tax Administration—Negligence Penalty.

Authority: IC § 6-8.1-5-1.

Taxpayer protests the imposition of negligence penalties.

STATEMENT OF FACTS

Taxpayer is a revocable trust ("Trust"). The settlors and trustees of the Trust are spouses ("Spouses"). During the tax year 2013, Spouses purchased a vehicle and later contributed that vehicle to the Trust. One of the Spouses went to the local Bureau of Motor Vehicles ("BMV") branch to transfer the title of the vehicle from them to the trust, listing zero dollars and zero cents ("\$0.00") as the price paid by Trust as the purchaser. Later, the BMV informed the Indiana Department of Revenue ("Department") of the transfer of title from Spouses to Trust and that the reported price of the vehicle was zero. The Department conducted an investigation and determined that the parties were not related and that the fair market price of the vehicle was \$19,672.00. The Department therefore issued a proposed assessment for use tax based on that amount plus penalty and interest on the transfer of the vehicle from Spouses to Trust. Trust protested the proposed assessments. An administrative hearing was held at which Spouses represented Trust. Later, Trust hired an attorney to provide additional protest analysis and documentation. The Department held the hearing open to allow additional time for the submission of such analysis and documentation. This Letter of Findings results from the administrative hearing and the materials provided prior to, during, and after the hearing. Further facts will be supplied as required.

I. Use Tax—Vehicle Transfer.**DISCUSSION**

Taxpayer protests the proposed assessment of use tax on the transfer of a vehicle from Spouses to Trust. Taxpayer believes that the Department erred in proposing use tax on the transfer of the vehicle from Spouses to Trust. Taxpayer states that the vehicle was transferred for no compensation from Spouses, who are the settlors and trustees of Trust, to Trust and that therefore no tax is due. The Department based its proposed assessment on the basis that the vehicle was transferred between non-related parties. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when sales tax is not paid at the time tangible personal property ("TPP") is purchased, use tax will be imposed. In the instant case, the Department determined that Trust had acquired a vehicle but had not paid the proper amount of sales tax at the time of acquisition. Therefore, the Department issued a proposed assessment for use tax, as provided by IC § 6-2.5-3-2(a).

Also of relevance is the definition of "revocable trust", as found in Black's Law Dictionary 1654 (9th ed. 2009) which states, "A trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income." Additionally, Black's provides a definition of "grantor trust" as:

A trust in which the settlor retains control over the trust property or its income to such an extent that the settlor is taxed on the trust's income. The types of controls that result in such tax treatment are set out in IRC (26 USCA) §§ 671-677. **An example is a revocable trust.** Id. at 1651.

(Emphasis added).

The Department based its proposed assessment for use tax on the average selling price of the type of vehicle in question, as provided by IC § 6-2.5-3-2(b) and IC § 6-2.5-3-6(e). IC § 6-2.5-3-2(b) provides:

The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

- (1) is acquired in a transaction that is an isolated or occasional sale; and
- (2) is required to be titled, licensed, or registered by this state for use in Indiana.

IC § 6-2.5-3-6(e) provides:

At the time a person pays the use tax for the purchase of a vehicle to a titling agency pursuant to subsection (d), the titling agency shall compute the tax due based on the presumption that the sale price was the average selling price for that vehicle, as determined under a used vehicle buying guide to be chosen by the titling agency. However, the titling agency shall compute the tax due based on the actual sale price of the vehicle if the buyer, at the time the buyer pays the tax to the titling agency, presents documentation to the titling agency sufficient to rebut the presumption set forth in this subsection and to establish the actual selling price of the vehicle.

In the instant case, the vehicle was acquired by Trust and was required to be titled, licensed and/or registered by Indiana for use in Indiana. The Department determined that the transfer did not qualify for the exemption from sales and use taxes provided by IC § 6-2.5-5-15.5, which provides that a transaction involving a motor vehicle is exempt from the state gross retail tax if the transaction consists of changing the motor vehicle title to add or delete an individual and the individual being added or deleted is a family member such as a spouse, child, grandparent, parent, or sibling of an owner.

Therefore, the Department issued its proposed assessment for use tax as provided by IC § 6-8.1-5-1(b), which

provides that if the Department reasonably believes that a person has not reported the proper amount of tax due, the Department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. In this case, the best information available was the average selling price of the type of vehicle in question, as determined under a used vehicle buying guide, as provided by IC § 6-2.5-3-6(e).

Regarding Taxpayer's first point of protest, Taxpayer explains that Spouses as settlors contributed the vehicle to Trust for no consideration. Taxpayer believes that this is the critical factor in determining whether or not a transfer of TPP is a "retail transaction" as defined by IC § 6-2.5-4-1(b), which provides:

A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

Without consideration, Taxpayer argues, there can be no retail transaction which could be subject to sales and use taxes. Taxpayer refers to *Maurer v. Ind. Dep't of State Revenue*, 607 N.E.2d 985 (Ind. Tax 1993), in which the Indiana Tax Court stated that, "The linchpin of taxability under [IC 6-2.5-4-1\(b\)\(2\)](#) is 'consideration,' not, as the Department's argument implies, 'another person.'" *Id.* at footnote 3.

While that case dealt with a raffle winner and the taxable status of the prize in the raffle, the court's reasoning regarding consideration and the imposition of sales tax and use tax is applicable here. Spouses transferred the vehicle to Trust without any form of consideration. The transfer was not a sale. Rather, the transfer of the vehicle was a grant of TPP from Spouses to Trust.

In reaching its determination that use tax was due, the Department was correct that the transfer of the vehicle did not qualify for the exemption provided by IC § 6-2.5-5-15.5, since Trust is not a family member of the previous owner of the vehicle. Also, the Department calculated the amount of proposed use tax using the proper method under IC § 6-8.1-5-1(b) and IC § 6-2.5-3-6(e). However, the key factor in the transfer of the vehicle is the fact that there was no consideration. As provided by IC § 6-2.5-4-1(b) and as explained by the court in *Maurer*, consideration is necessary in order to have a retail transaction.

Here, there was no consideration when Spouses, acting as settlors, contributed the vehicle to Trust after having purchased the vehicle themselves and having paid sales tax at the time of purchase. Therefore, there was no retail transaction. Since Trust did not acquire the vehicle in a retail transaction no Indiana sales tax was due at the time of the transfer. Indiana use tax is calculated on the amount paid for a vehicle is based on the average selling price of such a vehicle, unless that presumption is rebutted by documentation, as provided by [IC 6-2.5-3-6\(e\)](#).

As provided by IC § 6-2.5-3-2(b), the use tax is imposed on the storage, use, or consumption of a vehicle if the vehicle is acquired in a transaction that is an isolated or occasional sale and is required to be titled, licensed, or registered by this state for use in Indiana. Since the transfer of the vehicle from Spouses to Trust was not a sale, as explained by *Maurer*, the first prong of IC § 6-2.5-3-2(b) was not met and therefore use tax is not applicable. In this case, Taxpayer has rebutted the presumption of market value found under IC § 6-2.5-3-6(e) by providing sufficient documentation to show that there was no price paid for the vehicle.

As a second point of protest, Taxpayer states that Spouses paid sales tax when they bought the vehicle and that imposing use tax on the transfer from Spouses to Trust would constitute double taxation. Since it has been determined that no use tax is due as explained above, this portion of Taxpayer's protest is moot. However, the Department takes this opportunity to point out that sales tax is imposed on retail transactions involving TPP as provided by IC § 6-2.5-2-and that each transaction is subject to sales tax, unless one or more exemptions is available for that transactions.

Also, as explained above, if sales tax is due but is not paid at the time of transaction, use tax is due on the use of the TPP in Indiana, as provided by IC § 6-2.5-3-2(a). This does not constitute double taxation because Spouses and Trust are distinct and separate from each other despite the fact that Spouses are the settlors and trustees of Trust. If a distinct entity transfers TPP to another distinct entity for consideration, sales tax or use tax will be due on that transfer unless there is an exemption available.

In conclusion, Taxpayer has established that the vehicle in question was transferred from Spouses to Trust for no consideration and that no sales or use tax is due on that transaction. If the transfer had been for consideration, sales or use tax would have been due on the transaction and would not have constituted double taxation. Since

there was no consideration in this case, the transfer did not constitute a retail transaction. Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of penalty. Taxpayer states that it acted reasonably in performing its use tax duties. As provided in Issue I above, the Department notes that the burden of proving a proposed assessment wrong, including the assessment of penalty, rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c). In this case, Taxpayer has been sustained on its protest of the imposition of use tax, as provided above in Issue I. Since Taxpayer has been sustained on the imposition of base tax, the penalty is reduced to zero and this portion of the protest is moot.

FINDING

Taxpayer's protest is sustained.

SUMMARY

Taxpayer's protest is sustained on Issue I regarding the imposition of use tax on the transfer of a vehicle from Spouses to Trust. Taxpayer's protest is sustained on Issue II regarding the imposition of negligence penalty.

Posted: 04/29/2015 by Legislative Services Agency
An [html](#) version of this document.